IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.99 of 2000.

Judgement reserved on: 6.8.2007

Date of decision: 16.8.2007.

Mohan Meakin Limited .....Appellant

Vs.

The Proprietor of M/s. R. Jagavtar and company

.... Respondent.

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant : Mr. K.D. Sood, Advocate.

For the Respondent : Mr. Ajay Sharma, Advocate.

Kuldip Singh, Judge.

The complainant is in appeal against the judgment dated 29.9.1999 passed by learned Addl. Chief Judicial Magistrate, Kandaghat, Camp at Solan in Cr. Case No.15/4 of 97/1992, acquitting the respondent under Section 138 of the Negotiable Instruments Act,1881 (for short 'Act').

2. The brief facts are that the complainant company filed a complaint under Section 138 read with Section 142 of the Act against respondent, alleging therein that respondent is proprietor of firm M/s. Jagavtar & company, Ujjain, District Kangra. The respondent

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Whether the reporters of the local papers may be allowed to see the Judgment? yes

purchased Golden Eagle Beer from the complainant against invoice No.3000 dated 9.4.1992 and issued two cheques bearing Nos. 0047775 and 0047776, both dated 10.4.1992 for Rs.1,03,148/- each drawn on Union Bank of India, Kangra towards the payment of price of goods purchased by the respondent. The cheques on presentation by the complainant were not encashed and were received back on 18.5.1992 with the remarks "Exceeds arrangement". The complainant got issued a notice dated 22.5.1992 to the respondent with the request to make payment of Rs.2,06,296/-, the amount of both the cheques within a period of 15 days from the date of notice. The notice was received by the respondent on 28.5.1992 but respondent failed to make the payment of the dishonoured cheques. On these grounds the complainant filed the complaint.

3. The learned Addl. Chief Judicial Magistrate issued process to the respondent for facing trial for offence punishable under Section 138 of the Act. The notice of accusation was put to the respondent on 9.9.1996 under Section 138 of the Act. The complainant examined CW-1 H.N. Handa, Company Secretary, CW-2 D.C. Kapil, Assistant Manager PNB, Solan, CW-3 B.L. Negi, Accountant Union Bank of India, Kangra. Surinder Singh was examined under Section 313 Cr.P.C. The respondent examined DW-1 Surinder Singh. The learned Addl. Chief Judicial Magistrate

acquitted the respondent on 29.9.1999. The complainant is now in appeal

4. I have heard the learned counsel for the parties and gone through the record.

5. The learned counsel for the complainant-appellant has submitted that learned Addl. Chief Judicial Magistrate has not properly appreciated the oral and documentary evidence on record. The complainant has proved the case against the respondent. The respondent has been wrongly acquitted. The learned counsel for the respondent has supported the impugned judgment of acquittal. He has submitted that the complaint was filed against the proprietor of M/s. Jagavtar & Company, Ujjain, District Kangra but in the complaint Proprietor of M/s. Jagavtar & company has not been disclosed. The respondent has committed no offence on the basis of material on record. The learned Addl. Chief Judicial Magistrate has taken a possible view and therefore, judgment of acquittal may not be disturbed.

6. CW-1 H.N. Handa has stated that on 9.4.1992 vide invoice No.3000 beer amounting to Rs.2,06,296/- was purchased by the respondent and two cheques Ex.P-1 and Ex.P-2 amounting to Rs.1,03,148/- each were issued by respondent, Ex.P-6 is the carbon copy of the voucher vide which beer was sold to the respondent. These cheques were presented to the banker of the complainant, but were not encashed. A notice Ex.P-7 was got issued to respondent

and was sent to respondent by Regd. Post acknowledgment due vide postal receipt Ex.P-9. The notice was received by the respondent by AD card Ex.P-8. The payment was not made by the respondent even after the receipt of the notice. In cross-examination he has shown his ignorance who filled the date in cheques Ex.P-1 and Ex.P-2. He has admitted that cheques Ex.P-1 and Ex.P-2 were filled in after the invoice. He could not tell whether signatures on Ex.P-1 , Ex.P-2 and on acknowledgement Ex.P-8 are different. He denied the suggestion that notice Ex.P-7 was not received by the accused. He did not deny the suggestion that on acknowledgement Ex.P-8 the signatures are forged.

7. CW-2 D.C. Kapil has stated that Ex.P-1 and Ex.P-2 cheques came for collection but both were dishonoured. CW-3 B.L. Negi has stated that Ex.P-1 and Ex.P-2 cheques were issued by M/s. Jagavtar company but were returned for want of funds through memos Ex.P-3 and Ex.P-4 of Union Bank of India, Kangra on the ground of “Exceed arrangement”.

8. Surinder Singh in his statement under Section 313 Cr.P.C. has stated that he did not issue cheques Ex.P-1 and Ex.P-2, rather blank cheques were with the complainant which were filled in by the complainant. He has also stated that he did not receive notice and AD card does not bear his signature.

9. DW-1 Surinder Singh has stated that he was having L-1 licence since December, 1989 and was doing business at Ujjain

(Kangra) He operated L-1 licence from December 1989 to 1993-94. He did not issue cheques Ex.P-1 and Ex.P-2 to the complainant. He used to purchase goods from complainant on cash payment. The complainant in the beginning had taken blank cheques from him for security. He admitted his signatures on both the cheques. He denied receipt of notice Ex.P-7 nor Ex.P-8 AD bears his signature. He made the payment in cash and this has been referred at point-A in Ex.P-6. The complainant has misused the cheques.

10. The case of the complainant is that beer was supplied to respondent vide invoice dated 9.4.1992 Ex.P-6. In invoice Ex.P-6, at point-A terms of payment has been mentioned “cash”. It is not the case of the complainant that the beer was delivered to the respondent on 10.4.1992 and thereafter cheques Ex.P-1 and Ex.P-2 were issued. It has not been proved on record, on which date actually beer was delivered to respondent and on which date respondent had issued the cheques Ex.P-1 and Ex.P-2. In the normal course goods started from Solan on 9.4.1992 should have reached Ujjain Kangra on 9.4.1992 and cheques should have been dated 9.4.1992. The complainant however has not cleared this mist. The complaint was filed against the Proprietor of M/s. Jagavtar & Company, Ujjain District Kangra. In the complaint it has not been stated that Surinder Singh is the proprietor of M/s. Jagavtar & company. CW-1 H.N. Handa in his statement also has not stated that Surinder Singh is the proprietor of Jagavtar & company, Ujjain. The notice Ex.P-7 was issued to M/s

Jagavtar & company without disclosing in the notice who is the proprietor of M/s Jagavtar & company.

11. The notice Ex.P-7 was allegedly issued vide postal receipt No.0634 dated 28.5.1992 Ex.P-9 and on which name of the addressee has been mentioned P.N. Sharma with blue ink and also in red ink M/s. Jagavtar & company, Ujjain (Kangra). The red ink entry has not been verified and initialed by any body and no evidence was led by the complainant to explain how postal receipt Ex.P-9 bears two names P.N. Sharma and Jagavtar & company. Therefore, it has not been proved that notice Ex.P-9 was infact sent by postal receipt Ex.P-7.

12. The acknowledgement Ex.P-8 is allegedly signed by Jaspreet, but nothing has been placed on record how Jaspreet is connected with Jagavtar & company. DW-1 Surinder Singh has specifically denied his signature on Ex.P-8. CW-1 H.N. Handa in his statement has not denied the suggestion that Ex.P-8 is a forged acknowledgement . On Ex.P-8 Jaspreet has been written in red ink and “28.5.1992” alleged date of delivery of Ex.P-8 is written in blue ink. The AD Ex.P-8 has not been linked with receipt No.0634 Ex.P-9 The respondent has taken specific plea that notice Ex.P-7 was not delivered to him vide Ex.P-8 acknowledgment. It is not a case where the notice sent to the addressee was refused. In the present case the Ex.P-8 AD card has been relied by the complainant in order to show delivery of the notice to the respondent, therefore, it was for the

complainant to prove that Ex.P-8 AD was delivered to respondent. In absence of proof of notice to the respondent prior to the filing of the complaint under Section 138 of the Act, the complaint is not maintainable.

13. Learned Addl. Chief Judicial Magistrate has appreciated the material on record rightly. He has taken a possible view on the basis of material on record. The learned counsel for the respondent has relied ***C. Authony vs. K.G. Raghavan Nair [2003 (1) SCC 1]***, for the proposition that the appellate Court shall not interfere with the order of acquittal merely other view is possible from the material on record. No case for interference is made out. Hence, appeal is dismissed.

(Kuldip Singh)
Judge.

August 16, 2007
(sks)